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## ACKNOWLEDGMENTS

We would like to acknowledge the contributions of individuals to the 1997 edition of the Adult Sentencing Guidelines Manual. The Commission, chaired by Hubert G. Locke, has provided support and leadership. The Office of the Code Reviser has also provided valuable help. We would also like to acknowledge the numerous suggestions for improvements and additions to the manual received throughout the year from attorneys, judges, and criminal justice professionals. We welcome further suggestions of ways we can make this manual easier to use.

## INTRODUCTION

Adult offenders who commit felonies on or after July 1, 1984 are subject to the provisions of the Sentencing Reform Act (SRA). The enabling legislation (RCW 9.94A) contains guidelines and procedures used by the court to impose sentences. The SRA is based on a determinate sentencing model and eliminates extensive periods of parole and probation. When substantial and compelling reasons exist, sentences outside the presumptive ranges may be imposed by the court. Sentences that depart from the standard presumptive ranges must meet certain requirements and may be appealed by either the prosecutor or the defendant.

The goal of the sentencing guidelines system is to ensure that offenders who commit similar crimes and have similar criminal histories receive equivalent sentences. Presumptive sentencing schedules are structured so that offenses involving greater harm to a victim and society result in greater punishment. The guidelines apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or a defendant's previous record.

The Sentencing Guidelines Commission developed the initial set of guidelines and continues to advise the Legislature on necessary adjustments. The Commission consists of twentyvoting members, sixteen of whom are appointed by the Governor. These sixteen appointed members include four Superior Court judges, two defense attorneys, two prosecutors, four citizens, one Juvenile Court Administrator, one elected city official, one elected county official, and the chief of a local law enforcement agency. There are four ex-officio voting members: the Secretary of the Department of Corrections, the Director of the Office of Financial Management, Assistant Secretary of the Department of Social and Health Services Juvenile Rehabilitation Administration, and the Chair of the Indeterminate Sentence Review Board. The Speaker of the House of Representatives and the President of the Senate each appoint two nonvoting members to the Commission, one from each of the two largest caucuses in each house.

In order to advise the Legislature, the Commission requires accurate information on felony offenders, their crimes, and the sentences imposed under the Sentencing Reform Act. This information is derived from copies of Judgment and Sentence forms sent by the court clerks to the Commission office. Any case involving an exceptional sentence must include written Findings of Fact and Conclusions of Law. A computerized database allows the Commission staff to produce descriptive information on sentences and also to analyze the prison and jail population consequences of changes in the law.

The Commission also prepares statistical summaries of sentencing practices under the Sentencing Reform Act. Please contact the Commission office for information on cost and availability of these reports. If you have questions about the guidelines, wish to be notified of Commission meetings, or desire copies of minutes from Commission meetings, please contact the Commission office. We appreciate any comments or suggestions on the manual or other printed documentation.

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## USE OF THIS MANUAL

This edition of the manual is updated to reflect the 1997 Session Laws. Manual users should retain earlier editions of this manual for guidance on offenses committed prior to the effective dates of legislation enacted by the 1997 regular session.

Those interested in a comprehensive legal analysis of the Sentencing Reform Act are advised to read *Sentencing in Washington* by David Boerner (Butterworth Legal Publishers) and the 1996 supplement to *Washington Practice Volume 13A: Criminal Law* by Seth Aaron Fine (West Publishing Co.).

## SECTION I - SENTENCING GUIDELINES

This section explains the rules for applying the sentencing guidelines to felony crimes committed after June 30, 1984 including changes enacted by the 1997 regular session of the Legislature. The instructions cover the following:

- Offense Seriousness Level
- Offender Score
- Standard Sentence Range
- Sentencing Options
- Review of Sentences
- Penalty and Modification Hearing
- Discharge and Vacation of Conviction Record

### STEP 1 - DETERMINING THE OFFENSE SERIOUSNESS LEVEL

Determine the offense seriousness level by the offense of conviction. For example, if an offender was charged with Second Degree Robbery but pleaded guilty or was tried and convicted of First Degree Theft, the seriousness level is determined by the First Degree Theft conviction.

The seriousness level is measured on the vertical axis of the sentencing guidelines grid (Table 1, page I-2). RCW 9.94A.320 lists the crimes included within each seriousness level (Table 2, page I-3). Felony offenses are divided into 15 levels of seriousness, ranging from low (Level I) to high (Level XV). Offenses in the same level are considered equivalent in seriousness.

The 1990 Legislature amended the sentencing grid for the first time, adding a new seriousness level and changing the penalties for Level XI. The 1997 Legislature changed the penalties at level XIII. Crimes committed on or after July 27, 1997 should be scored according to the 1997 Sentencing Grid. This edition of the manual includes the 1997 Grid (Table 1, page I-2) and also includes the previous versions of the grid (Appendix D).

Some felonies rarely charged or recently created by the Legislature are not included in the Seriousness Level table and do not have a standard sentence range; thus, no sentence calculations are necessary for these unranked crimes. The sentencing options for unranked crimes are described on page 420.



TABLE 1  
SENTENCING GRID  
FOR CRIMES COMMITTED AFTER JULY 26, 1997

SERIOUSNESS LEVEL	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XV	Life Sentence without Parole/Death Penalty									
XIV	23y 4m 240 - 320	24y 4m 250 - 333	25y 4m 261 - 347	26y 4m 271 - 361	27y 4m 281 - 374	28y 4m 291 - 388	30y 4m 312 - 416	32y 10m 338 - 450	36y 370 - 493	40y 411 - 548
XIII	14y 4m 123 - 220	15y 4m 134 - 234	16y 2m 144 - 244	17y 154 - 254	17y 11m 165 - 265	18y 9m 175 - 275	20y 5m 195 - 295	22y 2m 216 - 316	25y 7m 257 - 357	29y 298 - 397
XII	9y 93 - 123	9y 11m 102 - 136	10y 9m 111 - 147	11y 8m 120 - 160	12y 6m 129 - 171	13y 5m 138 - 184	15y 9m 162 - 216	17y 3m 178 - 236	20y 3m 209 - 277	23y 3m 240 - 318
XI	7y 6m 78 - 102	8y 4m 86 - 114	9y 2m 95 - 125	9y 11m 102 - 136	10y 9m 111 - 147	11y 7m 120 - 158	14y 2m 146 - 194	15y 5m 159 - 211	17y 11m 185 - 245	20y 5m 210 - 280
X	5y 51 - 68	5y 6m 57 - 75	6y 62 - 82	6y 6m 67 - 89	7y 72 - 96	7y 6m 77 - 102	9y 6m 98 - 130	10y 6m 108 - 144	12y 6m 129 - 171	14y 6m 149 - 198
IX	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	5y 51 - 68	5y 6m 57 - 75	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144	12y 6m 129 - 171
VIII	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144
VII	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116
VI	13m 12+ - 14	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 6m 46 - 61	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102
V	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 41 - 54	5y 51 - 68	6y 62 - 82	7y 72 - 96
IV	6m 3 - 9	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 2m 53 - 70	6y 2m 63 - 84
III	2m 1 - 3	5m 3 - 8	8m 4 - 12	11m 9 - 12	14m 12+ - 16	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 51 - 68
II	0 - 90 Days	4m 2 - 6	6m 3 - 9	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57
I	0 - 60 Days	0 - 90 Days	3m 2 - 5	4m 2 - 6	5m 3 - 8	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29

TABLE 2  
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

Level	Standard Range	Offense
XV	Life/Death	Aggravated Murder 1° (RCW 10.95.020)
XIV	240 - 320m	Murder 1° (RCW 9A.32.030) Malicious Explosion 1° (RCW 70.74.280(1)) Homicide by Abuse (RCW 9A.32.055)
XIII	123 - 220m	Murder 2° (RCW 9A.32.050) Malicious Explosion 2° (RCW 70.74.280(2)) Malicious Placement of an Explosive 1° (RCW 70.74.270(1))
XII	93 - 123m	Assault 1° (RCW 9A.36.011) Assault of a Child 1° (RCW 9A.36.120) Rape 1° (RCW 9A.44.040) Rape of a Child 1° (RCW 9A.44.073) Malicious Placement of an Imitation Device (RCW 70.74.272(1)(a))
XI	78 - 102m	Rape 2° (RCW 9A.44.050) Rape of a Child 2° (RCW 9A.44.076) Manslaughter 1° (RCW 9A.32.060)
X	51 - 68m	Kidnapping 1° (RCW 9A.40.020) Child Molestation 1° (RCW 9A.44.083) Over 18 and Deliver Heroin or Narcotic from Schedule I or II to Someone Under 18 (RCW 69.50.406) Leading Organized Crime (RCW 9A.82.060(1)(a)) Indecent Liberties (with Forcible Compulsion) (RCW 9A.44.100(1)(a)) Malicious Explosion 3° (RCW 70.74.280(3))
IX	31 - 41m	Assault of a Child 2° (RCW 9A.36.130) Robbery 1° (RCW 9A.56.200) Explosive Devices Prohibited (RCW 70.74.180) Malicious Placement of an Explosive 2° (RCW 70.74.270(2)) Over 18 and Deliver Narcotic from Schedule III, IV, or V or a Nonnarcotic from Schedule I-V to Someone Under 18 and 3 Years Junior (RCW 69.50.406) Controlled Substance Homicide (RCW 69.50.415) Sexual Exploitation (RCW 9.68A.040) Inciting Criminal Profiteering (RCW 9A.82.060(1)(b)) Vehicular Homicide, by Being Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.520)

TABLE 2 (continued)  
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

Level	Standard Range	Offense
VIII	21 - 27m	<p>Arson 1° (RCW 9A.48.020)</p> <p>Promoting Prostitution 1° (RCW 9A.88.070)</p> <p>Possession of Ephedrine or Pseudoephedrine with Intent to Manufacture Methamphetamine (RCW 69.50.440)</p> <p>Selling for Profit (Controlled or Counterfeit) Any Controlled Substance (RCW 69.50.410)</p> <p>Manufacture, Deliver, or Possess with Intent to Deliver Heroin or Cocaine (RCW 69.50.401(a)(1)(i))</p> <p>Manufacture, Deliver, or Possess with Intent to Deliver Methamphetamine (RCW 69.50.401(a)(1)(ii))</p> <p>Vehicular Homicide, by the Operation of Any Vehicle in a Reckless Manner (RCW 46.61.520)</p> <p>Manslaughter 2° (RCW 9A.32.070)</p>
VII	15 - 20m	<p>Burglary 1° (RCW 9A.52.020)</p> <p>Vehicular Homicide, by Disregard for the Safety of Others (RCW 46.61.520)</p> <p>Introducing Contraband 1° (RCW 9A.76.140)</p> <p>Indecent Liberties (without Forcible Compulsion) (RCW 9A.44.100(1)(b) and (c))</p> <p>Child Molestation 2° (RCW 9A.44.086)</p> <p>Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct (RCW 9.68A.050)</p> <p>Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct (RCW 9.68A.060)</p> <p>Involving a Minor in Drug Dealing (RCW 69.50.401(f))</p> <p>Drive-by Shooting (RCW 9A.36.045)</p> <p>Unlawful Possession of a Firearm 1° (RCW 9.41.040(1)(a))</p> <p>Malicious Placement of an Explosive 3° (70.74.270(3))</p>
VI	12+ - 14m	<p>Bribery (RCW 9A.68.010)</p> <p>Rape of a Child 3° (RCW 9A.44.079)</p> <p>Intimidating a Juror/Witness (RCW 9A.72.110, RCW 9A.72.130)</p> <p>Incest 1° (RCW 9A.64.020(1))</p> <p>Manufacture, Deliver, or Possess with Intent to Deliver Narcotics from Schedule I or II (Except Heroin or Cocaine) (RCW 69.50.401(a)(1)(i))</p> <p>Intimidating a Judge (RCW 9A.72.160)</p> <p>Bail Jumping with Murder 1° (RCW 9A.76.170(2)(a))</p> <p>Theft of a Firearm (RCW 9A.56.300)</p> <p>Malicious Placement of an Imitation Device (RCW 70.74.272.(1)(b))</p>
V	6 - 12m	<p>Persistent Prison Misbehavior (RCW 9.94.070)</p> <p>Abandonment of a Dependent Person 1° (RCW 9A.42.060)</p> <p>Criminal Mistreatment 1° (RCW 9A.42.020)</p> <p>Rape 3° (RCW 9A.44.060)</p> <p>Sexual Misconduct with a Minor 1° (RCW 9A.44.093)</p> <p>Child Molestation 3° (RCW 9A.44.089)</p> <p>Kidnapping 2° (RCW 9A.40.030)</p>

TABLE 2 (continued)  
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

Level	Standard Range	Offense
		Extortion 1° (RCW 9A.56.120) Incest 2° (RCW 9A.64.020(2)) Perjury 1° (RCW 9A.72.020) Extortionate Extension of Credit (RCW 9A.82.020) Advancing Money or Property for Extortionate Extension of Credit (RCW 9A.82.030) Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040) Rendering Criminal Assistance 1° (RCW 9A.76.070) Bail Jumping with Class A Felony (RCW 9A.76.170(2)(b)) Sexually Violating Human Remains (RCW 9A.44.105) Delivery of Imitation Controlled Substance by Person Eighteen or Over to Person Under Eighteen (RCW 69.52.030(2)) Possession of a Stolen Firearm (RCW 9A.56.310)
IV	3 - 9m	Residential Burglary (RCW 9A.52.025) Hit and Run with Vessel, Injury Accident (RCW 88.12.155(3)) Theft of Livestock 1° (RCW 9A.56.080) Robbery 2° (RCW 9A.56.210) Assault 2° (RCW 9A.36.021) Escape 1° (RCW 9A.76.110) Arson 2° (RCW 9A.48.030) Commercial Bribery (RCW 9A.68.060) Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100) Malicious Harassment (RCW 9A.36.080) Threats to Bomb (RCW 9A.61.160) Willful Failure to Return from Furlough (RCW 72.66.060) Hit and Run - Injury Accident (RCW 46.52.020(4)) Vehicular Assault (RCW 46.61.522) Manufacture, Deliver, or Possess with Intent to Deliver Narcotics from Schedule III, IV, or V or Nonnarcotics from Schedule I-V (Except Marijuana or Methamphetamines) (RCW 69.50.401(a)(1)(iii) through (v)) Influencing Outcome of Sporting Event (RCW 9A.82.070) Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2)) Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
III	1 - 3m	Criminal Mistreatment 2° (RCW 9A.42.030) Abandonment of a Dependent Person 2° (RCW 9A.42.070) Extortion 2° (RCW 9A.56.130) Unlawful Imprisonment (RCW 9A.40.040) Assault 3° (RCW 9A.36.031) Assault of a Child 3° (RCW 9A.36.140) Custodial Assault (RCW 9A.36.100) Unlawful Possession of Firearm 2° (RCW 9A.41.040(1)(b)) Harassment (RCW 9A.46.020) Promoting Prostitution 2° (RCW 9A.88.080) Willful Failure to Return from Work Release (RCW 72.65.070)

TABLE 2 (continued)  
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

Level	Standard Range	Offense
		Burglary 2° (RCW 9A.52.030) Introducing Contraband 2° (RCW 9A.76.150) Communication with a Minor for Immoral Purposes (RCW 9.68A.090) Patronizing a Juvenile Prostitute (RCW 9.68A.100) Escape 2° (RCW 9A.76.120) Perjury 2° (RCW 9A.72.030) Bail Jumping with Class B or C Felony (RCW 9A.76.170(2)(c)) Intimidating a Public Servant (RCW 9A.76.180) Tampering with a Witness (RCW 9A.72.120) Manufacture, Deliver, or Possess with Intent to Deliver Marijuana (RCW 69.50.401(a)(1)(iii)) Delivery of a Material in Lieu of a Controlled Substance (RCW 69.50.401(c)) Manufacture, Distribute, or Possess with Intent to Distribute an Imitation Controlled Substance (RCW 69.52.030(1)) Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1)) Theft of Livestock 2° (RCW 9A.56.080) Securities Act Violation (RCW 21.20.400) Criminal Gang Intimidation (RCW 9A.46.120)
II	0 - 90 days	Unlawful Practice of Law (RCW 2.48.180) Malicious Mischief 1° (RCW 9A.48.070) Possession of Stolen Property 1° (RCW 9A.56.150) Theft 1° (RCW 9A.56.030) Trafficking in Insurance Claims (RCW 48.30A.015) Unlicensed Practice of a Profession or Business (RCW 18.130.190(7)) Health Care False Claims (RCW 48.80.030) Possession of Controlled Substance that is Either Heroin or Narcotics from Schedule I or II (RCW 69.50.401(d)) Possession of Phencyclidine (PCP) (RCW 69.50.401(d)) Create, Deliver, or Possess a Counterfeit Controlled Substance (RCW 69.50.401(b)) Computer Trespass 1° (RCW 9A.52.110) Escape from Community Custody (RCW 72.09.310) Class B Felony Theft of Rental, Leased, or Lease-purchased Property (RCW 9A.56.096(4))
I	0 - 60 days	Theft 2° (RCW 9A.56.040) Possession of Stolen Property 2° (RCW 9A.56.160) Forgery (RCW 9A.60.020) Taking Motor Vehicle without Permission (RCW 9A.56.070) Vehicle Prowl 1° (RCW 9A.52.095) Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024) Malicious Mischief 2° (RCW 9A.48.080) Reckless Burning 1° (RCW 9A.48.040) Unlawful Issuance of Checks or Drafts (RCW 9A.56.060) Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3)) False Verification for Welfare (RCW 74.08.055)

TABLE 2 (continued)  
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

Level	Standard Range	Offense
		Forged Prescription (RCW 69.41.020)
		Forged Prescription for a Controlled Substance (RCW 69.50.403)
		Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Nonnarcotic from Schedule I-V (Except Phencyclidine) (RCW 69.50.401(d))
		Class C Felony Theft of Rental, Leased, or Lease-purchased Property (RCW 9A.56.096(4))

## STEP 2 - DETERMINING THE OFFENDER SCORE

The offender score is measured on the horizontal axis of the sentencing guidelines grid. An offender may receive anywhere from 0 to 9+ points on that axis. In general terms, the number of points an offender receives depends on four factors: (1) the number of prior felony criminal convictions; (2) the relationship between any prior offense(s) and the current offense of conviction; (3) the presence of multiple prior or current convictions; and (4) whether the crime was committed while the offender was on community placement.

The following discussion covers calculation of the offender score. Included in this discussion are how to collect criminal history, how to score history, how to score multiple current convictions, and how to score the offender's status.

### CRIMINAL HISTORY COLLECTION

RCW 9.94A.030(12) defines criminal history to include the defendant's prior adult convictions in this state, federal court, and elsewhere, as well as adjudications in juvenile court. Some rules on criminal history refer to the felony class of the crime (Class A, Class B, or Class C). Appendix B contains a list of felony offenses by class and an explanation of how to determine the class of a felony.

Adult Criminal History: The Criminal Justice Information Act (RCW 10.98) established the Washington State Patrol Identification and Criminal History Section as the primary source of information on state felony conviction histories. After filing charges, prosecutors contact this section for an offender's Washington criminal history. In this act, the judge is directed to ensure that the felony defendant has been fingerprinted and an arrest and fingerprint form has been transmitted to the Washington State Patrol (RCW 10.98.050(2)). For out-of-state or federal criminal history information, prosecutors need to contact the Federal Bureau of Investigation for referral to the appropriate sources.

When gathering an offender's criminal history, focus on felony convictions. With one exception, misdemeanors are not calculated into the offender score. This exception is current convictions of felony traffic offenses<sup>1</sup>, where serious traffic offenses<sup>2</sup> are included in the offender score.

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<sup>1</sup> Vehicular Homicide, Vehicular Assault, Hit-and-Run Injury Accident, and Attempting to Elude a Pursuing Police Vehicle.

<sup>2</sup> RCW 9.94A.030(30): "Serious traffic offense" means: (a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or (b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

Collect information, if it is available, on whether an offender has participated in a program of deferred prosecution for a felony offense. This information is likely to be available only through county records. Persons who have participated in such a program do not meet the definition of a First-time Offender (RCW 9.94A.030(22)).

A conviction is defined as a verdict of guilty, a finding of guilty, or an acceptance of a plea of guilty. A prior conviction is defined as one existing before the date of the sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed are deemed "other current offenses" within the meaning of RCW 9.94A.400.

Convictions with a finding of sexual motivation should also be noted. A sexual motivation finding changes the scoring rules on some prior offenses and influences the sentencing options. This finding is possible only for crimes committed on or after July 1, 1990, the effective date of the enacting legislation.

The 1997 Legislature changed how juvenile criminal history is to be calculated. All prior adult felony and juvenile convictions are counted separately, except:

- Prior adult and juvenile offenses found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct. These are to be counted as one offense, the offense that yields the highest offender score.
- Multiple prior convictions for offenses committed before July 1, 1986. Priors served concurrently are to be counted as one offense, using the conviction for the offense that yields the highest offender score.
- For other prior convictions served concurrently, the current sentencing court shall determine whether those offenses shall be counted as one or separate offenses. If counted as one offense, the offense that yields the highest offender score is to be used.

Prior convictions for felony anticipatory offenses (criminal attempt, solicitation, or conspiracy) are scored as if they were convictions for completed offenses. If the present conviction is an anticipatory offense, each prior conviction counts the same as if the present conviction were a completed offense.

RCW 9.94A.030 stipulates that where it is known, criminal history for a defendant shall include the length and terms of any probation as well as whether the defendant has been incarcerated and the length of incarceration. This information is often collected as part of the Presentence Investigation Report.

All felony adjudications in juvenile court must be counted as criminal history for purposes of adult sentencing, except under the general "washout" provisions that apply to adult offenses.



Juvenile offenses sentenced on the same day must be counted separately unless they constitute the “same criminal conduct” as defined in RCW 9.94A.400(1)(a).

RCW 13.50.050(9) provides that after a charge has been filed, juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding shall be released upon request to the prosecution and defense counsel, subject to the rules of discovery. RCW 13.50.050(15) provides that any charging of an adult felony nullifies the sealing of a juvenile record.

"Wash Out" of Certain Prior Felonies In certain instances, prior adult felony or juvenile convictions are not calculated into the offender score. The rules regarding which prior convictions are included can be found in RCW 9.94A.360(2) and are summarized as follows:

- Prior Class A and sex felony convictions are always included in the offender score.
- Prior Class B (juvenile or adult) felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent 10 consecutive years in the community without committing any crime that subsequently results in a conviction.
- Prior Class C (juvenile or adult) felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.
- Prior (juvenile or adult) serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five years in the community without committing any crime that subsequently results in a conviction.

The Sentencing Reform Act allows the record of conviction to be vacated under certain conditions. RCW 9.94A.230 provides that vacated convictions "shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction." This vacation does not affect or prevent the use of an offender's prior conviction in a later criminal prosecution.

The eligibility rules for vacation of conviction record are similar to the wash out rules. Because the wash out rules are automatic and do not require court action, an offense will wash out before formal record vacation occurs. (The main distinction between vacation of record of conviction and wash out is that after vacation, an offender may indicate on employment forms that he or she was not convicted of that crime.)

Federal, Out-of-state, or Foreign Convictions For a prior federal, out-of-state or foreign conviction, compare the elements of the offense in that jurisdiction to Washington State laws to determine how to score the offense (RCW 9.94A.360(3)). If there is no clearly comparable offense under Washington State law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a Class C felony equivalent if it was a felony under the relevant federal statute. Judicial decisions on the comparability of non-Washington convictions will occur at the sentencing hearing.

## SCORING CRIMINAL HISTORY

Once the relevant prior convictions have been identified, the criminal history portion of the offender score may be calculated. The rules for scoring prior convictions are contained in RCW 9.94A.360. To make application of these rules easier, the offense reference sheets and scoring forms found in Section III indicate the correct number of points for each prior conviction depending on the current offense. To use these forms correctly, an understanding of the criminal history rules is necessary. For example, the forms do not repeat the "wash out" rules. The scoring rules for a drug or sex offense deserve special attention because of the increased points for certain prior offenses.

Scoring Drug Offenses<sup>3</sup>: The 1989 Legislature amended the scoring rules for drug offenses committed on or after July 23, 1989. Adult prior and other current drug offenses included in the offender score with a current drug offense count as three points each, and juvenile prior drug offenses count as two points each (9.94A.360(12)).

Scoring Sex Offenses<sup>4</sup>: A felony sex offense committed on or after July 1, 1990, also has special scoring rules. Sex offenses included in the offender score with a current sex offense count as three points each (RCW 9.94A.360(16)).

## SCORING MULTIPLE CURRENT CONVICTIONS

Multiple convictions may also influence the offender score. Keep in mind that for multiple current offenses, separate sentence calculations are necessary foreach offense because the law

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<sup>3</sup> RCW 9.94A.030(18): "'Drug offense' means: (a) Any felony violation of Chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403); (b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or (c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this section. Note that "Delivery of a Material in Lieu of a Controlled Substance" (RCW 69.50.401(c)) is defined as a drug offense; whereas, "Manufacture, Distribute, or Possess with Intent to Distribute an Imitation Controlled Substance (RCW 69.52.030(1)) is not.

<sup>4</sup> RCW 9.94A.030(33): "'Sex offense' means: (a) A felony that is a violation of Chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; (b) A felony with a finding of sexual motivation under RCW 9.94A.127; (c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection."

requires that each receive a separate sentence (RCW 9.94A.400) unless the offenses are ruled the same criminal conduct (RCW 9.94A.400(1)(a)).

#### Multiple Offense Scoring Steps:

- (A) If the current offenses do not include two or more serious violent offenses<sup>5</sup> arising from separate and distinct criminal conduct, apply RCW 9.94A.400(1)(a):
- Calculate the score for each offense.
  - For each offense, score the prior adult and juvenile convictions. Also, score the other current offenses on the scoring form line entitled "Other Current Offenses."
  - The court may find that some or all of the current offenses encompass the same criminal conduct<sup>6</sup> and are to be counted as one crime.
  - In cases of Vehicular Homicide or Vehicular Assault with multiple victims, offenses against each victim may be charged as separate offenses, even if the victims occupied the same vehicle. The resulting multiple convictions need not be scored as constituting the same criminal conduct.
  - Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed are scored as "other current offenses" (RCW 9.94A.400(1)(a)).
- (B) If the current offenses include two or more serious violent offenses arising from separate and distinct conduct, apply RCW 9.94A.400(1)(b):
- Calculate the score for each offense.
  - Identify the serious violent offense with the highest seriousness level. Calculate the sentence for that crime using the offender's prior adult and juvenile convictions. Do not include any other current serious violent offenses as part of the offender score, but do include other current offenses that are not serious violent offenses.

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<sup>5</sup> RCW 9.94A.030(31): "'Serious violent offense' is a subcategory of violent offense and means: (a) Murder 1°, Homicide by Abuse, Murder 2°, Assault 1°, Kidnapping 1°, Rape 1°, Manslaughter 1°, Assault of a Child 1°, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or (b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection."

<sup>6</sup> RCW 9.94A.400(1)(a): "... 'Same criminal conduct'... means...two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim." Cases involving vehicular homicide or vehicular assault need not be considered same criminal conduct.

- Score all remaining serious violent current offenses, calculating the sentence for the crime using an offender score of zero.
- For any current offenses that are not serious violent offenses, score according to the rules in (A).

Example: An offender was convicted of one count of First Degree Theft and one count of Forgery. Both offenses arose from separate and distinct criminal conduct. The criminal history consisted of one conviction for Second Degree Burglary. In this case, the rules in RCW 9.94A.400(1)(a) apply, and the theft and forgery must be separately scored. The prior burglary and the current forgery are included in the offender score for the theft, resulting in an offender score of 2 and a sentence range of 3 to 9 months. The prior burglary and the current theft are included in the offender score for the forgery, resulting in an offender score of 2 and a sentence range of 2 to 5 months. The sentence for each offense would run concurrently.

Example: An offender was convicted of one count of Second Degree Theft and one count of Second Degree Possession of Stolen Property. The court found that both counts encompassed the same criminal conduct and the offender had no criminal history. In this case, the other current offense is not counted in the offender score because RCW 9.94A.400(1)(a) stipulates that if some or all of the current offenses are found to encompass the same criminal conduct, those current offenses shall be counted as one crime. Therefore, the theft and possession would both be scored with offender scores of zero, with a sentence range for each crime of 0 to 60 days. The sentence for each offense would run concurrently.

Example: An offender was convicted of two counts of First Degree Kidnapping and one count of First Degree Assault. These offenses, all serious violent, arose from separate and distinct criminal conduct. The offender's criminal history consisted of one Third Degree Assault conviction. The scoring for this offender follows the rules in RCW 9.94A.400(1)(b). First, the crime with the highest seriousness level must be identified and scored. Since First Degree Assault is more serious (Level XII) than First Degree Kidnapping (Level X), the First Degree Assault is scored counting the prior Third Degree Assault as adult criminal history. This calculation would result in an offender score of 1 and a sentence range of 102 to 136 months. Next, the First Degree Kidnapping convictions are scored using a criminal history of zero. These calculations result in two sentence ranges of 51 to 68 months. These three sentences would run consecutively.

Example: An offender was convicted of one count of Third Degree Assault. The offender's criminal history consisted of adult convictions for Second Degree Theft and Forgery, and one adjudication of Second Degree Assault as a juvenile. In this case the rules of RCW 9.94A.400(1)(a) apply. The prior Second Degree Theft and Forgery are included in the offender score as one point each, and the juvenile Second Degree Assault also scores as one point, resulting in an offender score of 3 points. The Sentence range is 9 to 12 months.

## SCORING OFFENDER STATUS WHILE ON COMMUNITY PLACEMENT

The offender score also reflects whether the offense was committed while the offender was under community placement. RCW 9.94A.360(17) applies to crimes committed on or after July 1, 1988. An additional point is added to the score under these circumstances.

## STEP 3 - DETERMINING THE STANDARD SENTENCE RANGE

### SENTENCING GRID

Once the offense seriousness level and offender score have been calculated, the preliminary standard sentence range may be established.

Determine the standard sentence range by referring to the sentencing grid (RCW 9.94A.310, Table 1, page I-2). For each current offense, the intersection of the column defined by the offender score and the row defined by the offense seriousness level determines the standard sentence range. Alternatively, the same range is produced for individual offenses on the offense reference sheets in Section III. The court may sentence anywhere within this range. In those cases where the presumptive sentence exceeds the statutory maximum sentence for the crime, the statutory maximum sentence is the presumptive sentence (RCW 9.94A.420), as shown on the offense reference sheets in Section III.

If the crime was committed on or after July 1, 1990, and before July 27, 1997, Sentencing Grid B in Appendix D should be used to determine the sentence. If the crime was committed prior to July 1, 1990, use Sentencing Grid A in Appendix D.

TABLE 3  
 ANTICIPATORY OFFENSE GRID  
 (75% of the range for completed offenses in months)  
 (Does not apply to attempts and conspiracies to violate the Uniform Controlled  
 Substance Act)

Seriousness Level	LOW END OF RANGE									
	Offender Score									
	0	1	2	3	4	5	6	7	8	9/more
XIV	180.00	187.50	195.75	203.25	210.75	218.25	234.00	253.50	227.50	308.25
XIII	92.25	100.50	108.00	115.50	123.75	131.25	146.25	162.00	192.75	223.50
XII	69.75	76.50	83.25	90.00	96.75	103.50	121.50	133.50	156.75	180.00
XI	58.50	64.50	71.25	76.50	83.25	90.00	109.50	119.25	138.75	157.50
X	38.25	42.75	46.50	50.25	54.00	57.75	73.50	81.00	96.75	111.75
IX	23.25	27.00	30.75	34.50	38.25	42.75	57.75	65.25	81.00	96.75
VIII	15.75	19.50	23.25	27.00	30.75	34.50	50.25	57.75	65.25	81.00
VII	11.25	15.75	19.50	23.25	27.00	30.75	42.75	50.25	57.75	65.25
VI	9.00	11.25	15.75	19.50	23.25	27.00	34.50	42.75	50.25	57.75
V	4.50	9.00	9.75	11.25	16.50	24.75	30.75	38.25	46.50	54.00
IV	2.25	4.50	9.00	9.75	11.25	16.50	24.75	32.25	39.75	47.25
III	0.75	2.25	3.00	6.75	9.00	12.75	16.50	24.75	32.25	38.25
II	0.00	1.50	2.25	3.00	9.00	10.50	12.75	16.50	24.75	32.25
I	0.00	0.00	1.50	1.50	2.25	3.00	9.00	10.50	12.75	16.50

Seriousness Level	HIGH END OF RANGE									
	Offender Score									
	0	1	2	3	4	5	6	7	8	9/more
XIV	240.00	249.75	260.25	270.75	280.50	291.00	312.00	337.50	369.75	411.00
XIII	165.00	175.50	183.00	190.50	198.75	206.25	221.25	237.00	267.75	297.75
XII	92.25	102.00	110.25	120.00	128.25	138.00	162.00	177.00	207.75	238.50
XI	76.50	85.50	93.75	102.00	110.25	118.50	145.50	158.25	183.75	210.00
X	51.00	56.25	61.50	66.75	72.00	76.50	97.50	108.00	128.25	148.50
IX	30.75	36.00	40.50	45.75	51.00	56.25	76.50	87.00	108.00	128.25
VIII	20.25	25.50	30.75	36.00	40.50	45.75	66.75	76.50	87.00	108.00
VII	15.00	20.25	25.50	30.75	36.00	40.50	56.25	66.75	76.50	87.00
VI	10.50	15.00	20.25	25.50	30.75	36.00	45.75	56.25	66.75	76.50
V	9.00	10.50	12.75	15.00	21.75	32.25	40.50	51.00	61.50	72.00
IV	6.75	9.00	10.50	12.75	15.00	21.75	32.25	42.75	52.50	63.00
III	2.25	6.00	9.00	9.00	12.00	16.50	21.75	32.25	42.75	51.00
II	2.25	4.50	6.75	9.00	10.50	13.50	16.50	21.75	32.25	42.75
I	1.50	2.25	3.75	4.50	6.00	9.00	10.50	13.50	16.50	21.75

Note: The "low end" indicates the bottom end of the standard range, and the "high end" category indicates the top of the range. Determine the Seriousness Level and Offender Score; then find the low end of the range from the first grid and the high end from the second.

## ATTEMPT, CONSPIRACY, AND SOLICITATION (NON-VUCSA)

The standard sentence range for persons convicted of an anticipatory offense (criminal attempt, solicitation, or conspiracy) is 75 percent of the standard sentence range determined by using the offender score and offense seriousness level (RCW 9.94A.410). To simplify calculations, refer to the anticipatory offense grid (Table 3, page I-15).

## ATTEMPT, CONSPIRACY, AND SOLICITATION (VUCSA)

The sentencing of anticipatory VUCSA drug offenses (RCW 69.50) is more complicated than sentencing of anticipatory offenses under Chapter 9A.28 RCW.

An attempt or conspiracy to commit a drug offense is specifically addressed in RCW 69.50.407, which states that such offenses are punishable by "...imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense..." The appellate courts have consistently held that for VUCSA offenses, RCW 69.50.407 takes precedence over RCW 9A.28. The following reflects current sentencing practices; current statute and case law should be reviewed for definitive guidance in this area.

An attempt or conspiracy to commit a drug offense is typically sentenced as an unranked offense (0-12 months) following state case law. In State v. Mendoza (63 Wn. App. 373), the Court of Appeals held that "inasmuch as a conspiracy conviction under RCW 69.50.407 has no sentencing directions from the Legislature, it is punished under the unspecified crimes provisions of RCW 9.94A.120(7)."

Solicitation to commit a drug offense is not specifically addressed in RCW 69.50. It is usually charged under RCW 9A.28 and sentenced under RCW 9.94A.310(2) at 75 percent of the standard range. Solicitation to commit a Class C felony is a gross misdemeanor under RCW 9A.28.

## DEADLY WEAPON ENHANCEMENT

For specified crimes, if the court makes a finding of fact or the jury returns a special verdict that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the standard sentence range shall be increased.

The deadly weapon increase also applies to anticipatory offenses (attempt, conspiracy, and solicitation to commit a crime, RCW 9.94A.310(3),(4)). Additional time for a deadly weapon increase is added to the entire presumptive sentence range after it has been calculated based on the particular seriousness level and offender score (RCW 9.94A.370), and after the range adjustment for anticipatory offense (if appropriate).

The Legislature modified the deadly weapon increase in 1994 and 1995. In 1994, the Legislature expanded eligibility for the increase to all violent offenses. In 1995, the Legislature enacted the citizen Initiative 159, "Hard Time for Armed Crime," which modified the existing increases to distinguish subsequent (repeat) from first time offenses and firearm increases from those for other deadly weapons. The appropriate deadly weapon increase depends on the date of the offense, and in the case of subsequent deadly weapon offenses, the date of the prior (deadly weapon) offense. Figure 1 indicates the effective deadly weapon increase by offense date and the edition of this Manual, which describes the appropriate increase in detail. Please refer to the indicated Manual for detailed descriptions of pre-1995 enhancements. For scoring, see pages III-16 and III-17 for increase-specific worksheets.

Figure 1. Deadly Weapon Enhancement Effective Dates

Date of Current and/or Subsequent Offense	Current Offense Deadly Weapon Increase	Subsequent Offense Deadly Weapon Increase
>7/23/95	1995 and later Manual	1995 and later Manual
7/1/94 - 7/23/95	1994 Manual	not applicable
<7/1/94	1993 Manual	not applicable

Initiative 159, "Hard Time for Armed Crime", was passed during the 1995 legislative session and became effective after July 23, 1995. This initiative increased penalties and expanded the range of crimes eligible for deadly weapon enhancements. Enhancements apply to all felonies except Possession of a Machine Gun, Possession of a Stolen Firearm, Drive-by Shooting, Theft of a Firearm, Unlawful Possession of a Firearm First and Second Degree, and Use of a Machine Gun in a Felony. If the court makes a finding of fact or the jury returns a special verdict that the accused or an accomplice was armed with a deadly weapon<sup>7</sup> at the time of the commission of the crime, a deadly weapon enhancement is added to the standard sentence range. The deadly weapon enhancements differ for firearms and deadly weapons other than a firearm. For scoring, see page III-16 for the deadly weapon enhancement scoring form. If the presumptive standard range sentence exceeds the statutory maximum for the offense, the statutory maximum sentence becomes the presumptive sentence, unless the offender is a persistent offender as defined in RCW 9.94A.030.

<sup>7</sup> RCW 9.94A.125: Deadly Weapon means "...an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas."



Figure 2. Deadly Weapon Enhancements\*  
(Offenses committed after 7/23/95)

FIREARM ONLY		
Class	First Offense	Repeat Offender
A	60 Months	120 Months
B	36 Months	72 Months
C	18 Months	36 Months
OTHER DEADLY WEAPON		
Class	First Offense	Repeat Offender
A	24 Months	48 Months
B	12 Months	24 Months
C	6 Months	12 Months

\*Increases are mandatory, must be served in total confinement, run consecutively to each other and to other sentence provisions (subject to statutory maximum for the offense) and no earned early release for the enhancement portion of sentence.

## DRUG-RELATED ENHANCEMENTS

Enhancements to the presumptive range are required for certain drug offenses that occur in correctional facilities (RCW 9.94A.310(5)) or in a protected zone (RCW 9.94A.310(6)). These enhancements are as follows:

Correctional Facility: If the offender or an accomplice committed certain drug offenses while in a county jail or state correctional facility, the following additional time is added to the presumptive sentence range:

Figure 3. Drug-related Enhancements

Crime	Enhancement
Manufacture, Deliver, Possess with Intent to Deliver Heroin or Cocaine	18 Months
Manufacture, Deliver, Possess with Intent to Deliver Schedule I or II Narcotics (Except Heroin or Cocaine)	18 Months
Selling for Profit (Controlled or Counterfeit) Any Controlled Substance	18 Months
Manufacture, Deliver, Possess with Intent to Deliver Methamphetamine	18 Months
Manufacture, Deliver, Possess with Intent to Deliver Schedule III-V Narcotics or Schedule I-V Nonnarcotics (Except Marijuana or Methamphetamine)	15 Months
Manufacture, Deliver, Possess with Intent to Deliver Marijuana	15 Months
Possession of Controlled Substance that is Either Heroin or Narcotics from Schedule I or II	12 Months
Possession of Phencyclidine (PCP)	12 Months
Possession of a Controlled Substance that is a Narcotic from Schedule III-V or Nonnarcotic from Schedule I-V (Except Phencyclidine)	12 Months

Protected Zone: If the offender is sentenced for committing certain drug offenses<sup>8</sup> in a protected zone, 24 months are added to the presumptive sentence, and the maximum imprisonment and fine are doubled (RCW 69.50.435). These protected zones are as follows:

- In a school or on a school bus;
- Within 1,000 feet of a school bus route stop or a school ground perimeter;
- In a public park;
- On a public transit vehicle or in a public transit stop;
- At a civic center or public housing project designated as a drug-free zone by the local governing authority;
- Within 1,000 feet of the perimeter of a facility designated as a civic center, if the local governing authority specifically designates the 1,000-foot perimeter.

#### STEP 4 - DETERMINING THE SENTENCING OPTIONS

The sentencing options available to the court vary depending on the offender's criminal history and the crime(s) of conviction. The court must impose a determinate sentence<sup>9</sup> in every case. The only exception to this law is for sentences imposed under the Special Sex Offender Sentencing Alternative (SSOSA) (RCW 9.94A.120(8)(a)), which allows suspended sentences.

This section describes the available sentencing options. Sentencing options include the First-time Offender Waiver, Special Sex Offender Sentencing Alternative, Drug Offender Sentencing Alternative (DOSA), Work Crew, Work Ethic Camp, exceptional sentences, sentence enhancements, home detention, and community placement. Please refer to individual offense reference sheets in Section III for the sentencing options available for individual felonies.

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<sup>8</sup> RCW 69.50.435(a) "[A violation of:]...RCW 69.50.401(a) by manufacturing, selling, delivering, or possessing with intent to manufacture, sell or deliver a controlled substance listed under that subsection or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana..."

<sup>9</sup> RCW 9.94A.030(16): "...a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation."

## STANDARD SENTENCE RANGE

The sentencing grid determines the standard sentence range for the most commonly charged felonies. RCW 9.94A.420 states that if the presumptive sentence duration given in the sentencing grid exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence.

The ranges in the sentencing grid are expressed in terms of total confinement. A term of confinement of one year and one day (12+) is to be served in a state facility or institution. A term of one year or less is to be served in a county facility, unless, when combined with other felony terms, the total time to be served exceeds one year (RCW 9.94A.190). For some offenders, the court may convert total confinement sentences to partial confinement or community service (see the discussion of alternative conversions, page I-31). (Offenders with a sentence greater than one year, who also have a sentence less than one year, are to serve the entire period of time in a state institution.)

## UNRANKED CRIMES

For an offender convicted of a crime without an established seriousness level (i.e., an unranked crime), no standard sentence range applies. In these cases, the court is to impose a determinate sentence that may include not more than one year of confinement, community service work, legal financial obligations, a term of community supervision not to exceed one year, and/or a fine. Sentences involving greater than one year of confinement are exceptional sentences and must be justified in writing (RCW 9.94A.120(7)).

## COMMUNITY CUSTODY

Community custody is that period of time an offender resides in the community under Department of Corrections (DOC) supervision, either in lieu of total confinement (e.g., as part of community placement) or under the terms of the sentence (e.g., as required by the terms of a DOSA or SSOSA sentencing alternative, as part of a sex offender sentence, or as a result of successfully completing Work Ethic Camp). Community custody differs from community supervision in that offenders who violate terms or conditions of their DOC supervision may be sanctioned administratively by DOC without a formal court hearing. Violations of sentence conditions are reviewed at an inmate disciplinary hearing conducted by DOC. Sanctions may include transfer to a more restrictive confinement level. Any detention ordered is served either in a Department of Corrections facility, or if served in a county facility, is the financial responsibility of DOC (RCW 9.94A.207(2)). Depending on the basis for community custody, sanctions may include a return to prison for the remainder of the unexpired earned early release time, or for up to 60 days for each violation.

## COMMUNITY SUPERVISION

If the sentence is one year or less, the court may impose up to one year of community supervision. Community supervision for up to two years may be ordered with First-time Offender Waiver sentences. Community supervision is limited to 24 months for consecutive sentences (RCW 9.94A.400(5)). An offender shall be on community supervision as of the date of sentencing. This period of supervision is tolled while the offender is in total or partial confinement.

Community supervision under the First-time Offender Waiver may include rehabilitative conditions. For all supervision sentences, the conditions may include crime-related prohibitions.<sup>10</sup> All community supervision sentences for crimes committed on or after July 28, 1991, include a requirement that offenders cannot own, use or possess firearms or ammunition (RCW 9.94A.120(15)).

If the court decides that an offender's crime was caused by drug or alcohol use, a prohibition against such use may be imposed during community supervision, with regular monitoring by urinalysis or breathalyzer tests.

## COMMUNITY PLACEMENT

The 1988 Legislature created community placement, an after-prison supervision program for certain violent offenders, drug offenders, and sex offenders. Community placement consists of two components: community custody and post-release supervision. Community placement begins upon completion of the confinement term or when the offender is transferred to community custody. If the offender is sentenced to the statutory maximum period of confinement, the community placement portion of the sentence consists entirely of the community custody to which the offender may become eligible. Any period of community custody actually served is to be credited against the community placement portion of the sentence.

Community Custody Under Community Placement This type of community custody applies to inmates who earn "good time" while in prison and have a sentence that includes community placement. These offenders are subject to the same controls placed on prison inmates. Violations of sentence conditions are reviewed at an inmate disciplinary hearing conducted by the Department of Corrections. Sanctions may include transfer to a more restrictive confinement level to serve the remaining portion of the original sentence. Any detention ordered is served either in a Department of Corrections facility, or if served in a county facility, is the financial responsibility of DOC (RCW 9.94A.207(2)).

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<sup>10</sup> RCW 9.94A.030(11): "'Crime-related prohibition' means an order of a court prohibiting conduct that directly relates to the circumstance of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct."

Offenders who have a sentence that includes community placement and who have earned early release time at the time of release from prison are placed on community custody for that portion of the community placement equal to their earned early release time.

A mandatory period of community custody is required for all sex offenders sentenced for a sex offense committed on or after June 6, 1996. The required period of community custody is three years or the period of earned early release, whichever is longer. Sex offenders who are released from total confinement with less than three years of earned early release are still required to serve a period of three years community custody. This requirement applies to SSOSA and non-SSOSA offenders alike.

Offenders who successfully complete the Work Ethic Camp Program are placed on community custody for the remainder of their sentence.

Post-release Supervision: This program is for an offender released from prison who has an additional period of community placement to serve, but who is not on community custody. This could happen, for instance, if the offender received no earned early release credit, or if he or she had completed the community custody portion of the sentence. If they violate sentence conditions, these offenders are entitled to a court hearing. Sanctions may include up to 60 days for each violation, and detention time is served in a county jail.

Eligibility for Community Placement Community placement for 12 months is a mandatory sentence condition for offenders sentenced to prison for the following offenses committed on or after July 1, 1988:

- Any sex offense (committed before July 1, 1990);
- Any serious violent offense (committed before July 1, 1990);
- Second Degree Assault;
- Crime against a person with a deadly weapon finding<sup>1</sup> under RCW 9.94A.125; or
- Any felony offense under Chapter 69.50 or 69.52 RCW.

There is a mandatory two-year community placement sentence in addition to other terms of sentence for the following offenses if they were committed after June 30, 1990:

- Any sex offense committed before June 6, 1996;

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<sup>11</sup> RCW 9.94A.125: "...For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas."

- Any serious violent offense; or
- Any Vehicular Homicide or Vehicular Assault committed on or after June 6, 1996.

There is a mandatory three-year community custody sentence in addition to other terms of sentence for the following offenses if they were committed on or after June 6, 1996:

- Any sex offense committed on or after June 6, 1996;

Community Placement Conditions Unless the conditions are waived by the court, an offender on community placement must:

- Report to and be available for contact with the assigned community corrections officer as directed;
- Receive prior approval for living arrangements and residence location;
- Work at Department of Corrections' approved education, employment, and/or community service;
- Not possess or consume controlled substances that are not legally prescribed;
- Not own, use or possess firearms or ammunition;
- Pay supervision fees as determined by the Department of Corrections; and
- Submit to affirmative acts necessary to monitor compliance, such as Polygraph or drug testing.

In addition to the above, the court may impose the following special conditions. The offender must:

- Remain within or outside specified geographical boundaries;
- Have no direct or indirect contact with the victim of the crime;
- Have no direct or indirect contact with a specified class of individuals (must be specified);
- Participate in crime-related treatment or counseling services;
- Consume no alcohol; and/or
- Comply with crime-related prohibitions.

Conditions of community placement may be changed prior to transfer or during supervision, but they cannot be made more restrictive. If an offender commits a new felony while on community placement, an additional point is added to his or her offender score, thus increasing the sentencing range for the new felony.

## FIRST-TIME OFFENDER WAIVER

The court has a statutory alternative to the standard range for certain first-time offenders (RCW 9.94A.120(5)). Offenders are eligible for the First-time Offender Waiver if they:

- Have not been convicted of a violent offense;
- Have not been convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver a Schedule I or II Narcotic Drug or Methamphetamine;
- Have not been convicted of Selling for Profit any Controlled Substance or Counterfeit Substance;
- Have not been convicted of a sex offense;
- Have not previously been convicted of a felony in this state, federal court, another state, or foreign country;
- Have never participated in a program of deferred prosecution for a felony offense; and
- Have no juvenile adjudication for any felony offense.

For these offenders, the court is given broad discretion in setting the sentence. Choices available to the court include:

- Imposing up to 90 days of confinement in a facility operated or utilized under contract by the county;
- Requiring that the offender refrain from committing new offenses;
- Requiring up to two years of community supervision which, in addition to crime-related prohibitions<sup>12</sup>, may include requirements that the offender perform any one or more of the following:

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<sup>12</sup> RCW 9.94A.030(11): "'Crime-related prohibition' means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct."

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the court or a community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to the court and a community corrections officer;
- (f) Pay all court-ordered financial obligations, and/or perform some community service work.

The court's decision to impose or not impose the First-time Offender Waiver cannot be appealed by the prosecutor or defendant (RCW 9.94A.210(1)).

## SEX OFFENDER SENTENCING OPTIONS

A special sentencing option allows community treatment of sex offenders. An inpatient sex offender treatment program is operated at Twin Rivers Corrections Center in Monroe. This program is not a sentencing option; offenders are admitted at the discretion of the Department of Corrections, rather than by court order.

Special Sex Offender Sentencing Alternative The Special Sex Offender Sentencing Alternative (SSOSA) provides for a suspended sentence that may include a jail term of up to six months and required outpatient or inpatient treatment (RCW 9.94A.120(8)(a)). Offenders sentenced under this alternative are not eligible to accrue Earned Early Release while serving the suspended sentence. Examinations and treatment under SSOSA shall only be conducted by sex offender treatment providers certified by the Department of Health, unless the offender leaves the state for other than certification reasons or there are no certified providers available near the offender's home. To be eligible for this option, offenders must:

- Not be convicted of a serious violent offense with a sexual motivation finding, or of Rape First Degree, or Attempted Rape First Degree, or Rape Second Degree.
- Be convicted of a violation of Chapter 9A.44 RCW, Incest (RCW 9A.64.020), Communication with a Minor for Immoral Purposes (RCW 9.68A.090), or an offense with a finding of sexual motivation.
- Have had no prior convictions for sex offenses in this or any other state.
- Have a current offense and criminal history that permit the court to impose a sentence within the standard range of less than 11 years of confinement.



If those criteria are met, the court, on its own motion or on the motion of the state or the defendant, may order an examination to determine if the defendant is amenable to treatment. The examination report must include the following:

- The defendant's version of the facts and the official version of the facts;
- The defendant's offense history;
- An assessment of problems in addition to the alleged deviant behaviors;
- The defendant's social and employment situation; and
- Other evaluation measures used.

The examiner must assess the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- Frequency and type of contact between offender and therapist;
- Specific issues to be addressed in the treatment and description of planned treatment modalities;
- Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- Anticipated length of treatment; and
- Recommended crime-related prohibitions.

A second examination regarding the offender's amenability to treatment may be ordered by the court, with the evaluator selected by the party making the motion. The defendant is to pay the cost of any second examination ordered unless the court finds the defendant to be indigent, in which case the state pays the cost.

Once the examination report is received, the court determines whether the defendant and the community will benefit from use of this special sentencing alternative. The court also is to consider the victim's opinion whether the offender should receive a treatment sentence.

If the court decides to exercise the SSOSA option, the judge imposes a sentence within the standard sentence range, suspends execution of the sentence, and orders the defendant to spend up to six months in confinement (not to exceed the standard range of confinement for that offense). SSOSA is the only sentencing option where suspended sentences are possible.

The court is required to order treatment during the suspended sentence for a period up to three years in duration. The court may order outpatient or inpatient treatment; however, a community mental health center may not be used for such treatment unless it has a special sex offender treatment program. The offender cannot change sex offender treatment providers without first notifying the prosecutor, the community corrections officer, and the court. In addition, the offender cannot change providers without court approval if the prosecutor or community corrections officer object to the change.

### Community Custody for SSOSA Offenders

As part of the SSOSA sentence, the court is required to place the offender on community custody for the length of the suspended sentence or three years, whichever is greater. The court may require as terms of community custody crime-related prohibitions and requirements that the offender:

- Devote time to a specific employment or occupation;
- Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- Report as directed to the court and a community corrections officer;
- Pay all court-ordered legal financial obligations, perform some community service work, or any combination thereof;
- Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

Several options are available should the offender violate these sentence conditions. The court may revoke the suspension and order execution of the sentence, or order up to 60 days in confinement. If a violation of conditions occurs during community custody, the Department of Corrections is authorized to return the offender to more restrictive confinement immediately. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

During the period of treatment, the sex offender therapist must submit quarterly reports on the offender's treatment progress to the court and parties. At a minimum, the reports shall reference the treatment plan and include the dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

At the sentencing hearing, the court is to set a treatment termination hearing for three months prior to the anticipated date of treatment completion. The sex offender therapist and community corrections officer are to submit written reports to the court and parties prior to

this hearing. The reports will address the offender's compliance with treatment and monitoring requirements and will contain recommendations regarding termination from treatment, including proposed community custody conditions.

A second evaluation regarding the advisability of treatment termination may be requested by either party and ordered by the court. The cost shall be borne by the offender unless the court finds the person to be indigent, in which case the state pays the cost.

As a result of the hearing, the court may modify the supervision conditions and shall either terminate treatment or extend treatment for up to the remaining period of community custody.

Sex Offender Treatment in Prison: Sex offender treatment is available for some state prisoners. The statutory authorization and procedures vary depending on the date the offender committed the crime. For offenders who committed crimes on or after July 1, 1990, the Department of Corrections has the discretion to place them in a treatment program within Twin Rivers Correctional Center. No authority exists for converting confinement time to community supervision for offenders who successfully complete the program.

For an offender who committed a felony sex offense between July 1, 1987 and July 1, 1990, and received a sentence of more than one year but less than six years of confinement, the court may request that the Department of Corrections evaluate the person's amenability to treatment, and the department may place the offender in a treatment program within a correctional facility. If the offender completes a program before the expiration of the sentence, the department may request that the balance of confinement be converted to community supervision (except for offenders convicted of Rape in the First or Second Degree). If the offender violates a condition of this community supervision, the court may impose a 60-day penalty or order the balance of community supervision to be served in prison.

Sex offenders who committed their crime prior to July 1, 1987 may, subject to available funds, request an evaluation by the Department of Corrections regarding their amenability to treatment. If such amenability is determined, an offender may request placement in a treatment program within the prison, subject again to available funds.

Community Custody for Sex Offenses Committed on or after June 6, 1996 The court is required to sentence sex offenders who commit sex offenses on or after June 6, 1996, to a term of community custody of three years or the period of earned early release, whichever is longer. At any time prior to the completion of the terms of community custody, the court may extend any or all of the conditions of community custody for a period up to the length of the statutory maximum for the offense. If the victim was a minor child, a condition may be imposed prohibiting contact between the sex offender and the minor victim or a child of similar age or circumstance as a previous victim.

## DRUG OFFENDER SENTENCING ALTERNATIVE

Offenders sentenced on or after April 19, 1995, for Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver a Schedule I or II narcotic (excluding methamphetamine) or a felony anticipatory offense (attempt, solicitation, or conspiracy) to commit such an offense are eligible for the Drug Offender Sentencing Alternative (DOSA) sentencing alternative, if the following conditions are met:

- No deadly weapon enhancement.
- No prior felony convictions.
- The offense involved a small amount of drugs as determined by the court.
- The court determines that the community and the offender would benefit from the imposition of the alternative.

If the court elects to impose the DOSA sentencing alternative, the court imposes a sentence of one-half the midpoint of the offender's standard range, to be served in a prison facility. The Department of Corrections provides assessment and appropriate treatment during the period of confinement. The court must also impose one year of community supervision, which must include appropriate outpatient substance abuse treatment, crime-related prohibitions, and a requirement to submit to urinalysis or other testing to monitor compliance. The court is also required to impose at least three additional conditions from a list of allowed conditions of sentence (RCW 9.94A.120(6)(b)).

### Community Custody for DOSA Offenders

DOSA offenders who successfully complete the prison portion of the program are placed on community custody for the remainder of their sentence. Offenders who fail to follow the conditions of the DOSA sentence may be returned to court and ordered to serve up to the remaining one-half of the midpoint of their standard range.

## PERSISTENT OFFENDERS

Initiative 593 ("Three Strikes and You're Out") was approved by the voters in 1993. It became effective December 2, 1993, and established the penalty of life without parole for "persistent offenders."

The original "Three Strikes" legislation defined a "persistent offender" as an offender who is convicted of a most serious offense and who has at least two prior convictions for most serious offenses, provided the first prior conviction occurred before the second prior conviction offense was committed (in other words, the three convictions must occur on separate "trips" through the system). Initiative 593 mandates that persistent offenders be sentenced to life in

prison without parole. A "most serious offense" is defined as any of a list of enumerated offenses (RCW 9.94A.030(23)). In addition, the definition includes any Class B felony committed with sexual motivation and any felony committed with a deadly weapon.

The definition of persistent offender also includes "Two Strike" sex offenders. To qualify as a persistent sex offender, an offender must have two separate convictions of specified sex offenses. The 1997 Legislature broadened the list of offenses that qualify as strikes under the "Two Strike" law. The specific offenses qualifying as sexual strikes are enumerated in RCW 9.94A.030(27)(b) and include Rape First Degree, Rape Second Degree, Indecent Liberties by Forcible Compulsion, Rape of a Child First Degree (where the offender was age 16 or older at the time of the offense) Rape of a Child Second Degree (where the offender was 18 or older at the time the offense), Child Molestation in the First Degree; or Murder First Degree, Murder Second Degree, Kidnapping First Degree, Kidnapping Second Degree, Assault First Degree, Assault Second Degree, Burglary First Degree, Homicide by Abuse, or Assault of a Child in the First Degree; with a finding of sexual motivation; or an attempt to commit any of the crimes listed above. An offender convicted of one of these offenses, who was previously convicted of one on a separate "trip through the system," must be sentenced to life without parole.

#### LIMITS ON EARLY RELEASE

Offenders convicted of a serious violent offense or a sex offense that is a Class A felony committed on or after July 1, 1990 may not receive earned early release time exceeding 15 percent of the sentence. In no other case shall the aggregate earned early release time exceed one-third of the total sentence.

Persistent offenders, and those convicted of Assault of a Child First Degree, Murder First Degree, Assault First Degree, and Rape First Degree are prohibited from early release (e.g., community custody, "good time", furlough, home detention, partial confinement, work crew, work release) during that period of confinement constituting the mandatory minimum.

Offenders who successfully complete the Work Ethic Camp (WEC) shall not accrue earned early release time.

Offenders sentenced under SSOSA are not eligible to accrue any earned early release time while serving a suspended sentence.

An offender shall not receive any earned early release time for that portion of his or her sentence that results from any deadly weapon enhancements.

## ALTERNATIVE CONVERSIONS

The sentencing grid ranges are expressed in terms of total confinement (RCW 9.94A.370). For certain offenders, the court may convert terms of total confinement to partial confinement or community service. This provision allows courts to take advantage of available alternatives to confinement in cases where it is deemed appropriate. If the court does not use an alternative conversion for a nonviolent offense with a sentence range of one year or less, the reason why shall be stated on the Judgment and Sentence form (RCW 9.94A.380).

For all offenders with sentences of one year or less, one day of total confinement may be converted to one day of partial confinement. Nonviolent offenders with sentences of one year or less are also eligible for conversion of total confinement to community service (one day of confinement equals eight hours of service). This community service conversion, however, is limited to 30 days or 240 hours. If a community service conversion is ordered, and the determinate sentence is greater than 30 days, the balance of the term is to be served in total or partial confinement.

Partial confinement sentences may allow the offender to serve the sentence in work release, home detention, work crew, or a combination of work crew and home detention. If the offender violates the rules of the work release facility, work crew, or home detention program, or fails to remain employed or enrolled in school, the facility directors may have the offender transferred to the county detention facility. The offender may then request an administrative hearing. Pending the hearing or in the absence of a request for such a hearing, the offender shall serve the remainder of the term of confinement as total confinement (RCW 9.94A.180).

## WORK CREW

Work crew is a partial confinement option created by the 1991 Legislature. The offender must have committed the offense on or after July 28, 1991. The offense may not be a sex offense<sup>13</sup>. For offenses committed before July 25, 1993, the offender must be sentenced to a facility operated or utilized under contract by a county (i.e., the sentence must be one year or less in length); this restriction does not apply to offenses committed after that date. If the sentence is 9 months or more, at least 30 days of total confinement must be served before being eligible for work crew. Work crew may be simultaneously imposed with electronic home detention. Work crew hours served may include work on civic improvement tasks, substance abuse counseling, job skills training, and a maximum of 24 hours per week at approved, verified work.

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<sup>13</sup> RCW 9.94A.030(33): "Sex offense' means: (a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; (b) A felony with a finding of sexual motivation under RCW 9.94A.127; or (c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection."

To be eligible to receive credit for approved, verified work, offenders must first successfully complete 4 weeks of work crew, each week comprised of 35 hours of service. Work crew projects specified by the work crew supervisor must be completed in coordination with approved, verified work. Unless exempted by the court, offenders using approved, verified employment as part of their work crew hours must pay a monthly supervision assessment.

## HOME DETENTION

Home detention is a partial confinement program where the offender is confined to a private residence and subject to electronic surveillance. The option was created by the 1988 Legislature and is available for offenders convicted of crimes committed on June 9, 1988 or later. Because partial confinement programs are limited to sentences of one year or less, home detention is not an option for offenders with prison sentences.

Convictions for any of the following offenses make the offender ineligible for home detention: a violent offense, a sex offense, a drug offense, First or Second Degree Reckless Burning, Third Degree Assault, Third Degree Assault of a Child, Unlawful Imprisonment, or Harassment.

Home detention may be imposed for offenders convicted of Possession of a Controlled Substance (RCW 69.50.401(d)) or Forged Prescription for a Controlled Substance (RCW 69.50.403), providing the offender is monitored for drug use.

Offenders convicted of Second Degree or Residential Burglary must meet the following eligibility conditions: (a) successfully complete twenty-one days in a work release program; (b) have no convictions for Second Degree or Residential Burglary during the preceding two years and not more than two prior convictions for burglary; (c) have no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense; (d) have no prior charges of escape; and (e) fulfill the other conditions of the home detention program. Participation in this program is conditioned upon (a) employment or school attendance, (b) program rules adherence, and (c) compliance with court-ordered legal financial obligations (RCW 9.94A.030(42)).

Home detention may also be ordered for offenders whose medical or health-related conditions, concerns, or treatment would be better addressed under the home detention program or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered legal financial obligations.

## WORK ETHIC CAMP PROGRAM

In 1993, the Legislature established the Work Ethic Camp Program sentencing alternative. The 1995 Legislature expanded eligibility criteria for the program. Under current law, offenders are eligible if they:

- Are sentenced to between 16 and 36 months confinement.
- Have no current or prior violent or sex offense convictions.
- Are referred by the sentencing court.

The Department of Corrections is required to place referred offenders in the program, subject to capacity and the offender's agreement to participate, unless physical or mental impairments are judged to preclude participation. The length of the program is to be between 120 and 180 days, including a 2-week period of transition training. Successful participants' sentences are converted at a rate of one day of camp to three days of total confinement. Upon completion of the program, offenders are released on community custody to complete the remainder of their time of total confinement. Earned early release time does not accrue to successful participants. Participants who fail to complete the program are required to serve the unexpired term of their sentence. The Work Ethic Camp is established as a pilot alternative incarceration program in effect until July 1, 1998.

Offenders who successfully complete the Work Ethic Camp Program are placed on community custody for the remainder of their sentence.

## EXCEPTIONAL SENTENCES

The standard sentence range is presumed to be appropriate for the typical felony case. However, the law provides that in exceptional cases, the court has the discretion to depart from the standard sentence range and impose an exceptional sentence. RCW 9.94A.120(2) states that the court "may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence."

An exceptional sentence must be a determinate sentence and cannot exceed the statutory maximum for the crime. In the case of the five crimes with statutory mandatory minimum sentences (Aggravated First Degree Murder, First Degree Murder, First Degree Assault, First Degree Assault of a Child, and First Degree Rape), an exceptional sentence cannot go below these minimum terms of confinement (RCW 10.95.030 and RCW 9.94A.120(4)). Persistent offenders sentenced to life in prison are not eligible for exceptional sentences (RCW 9.94A.120(4)).



If the court imposes a sentence outside a standard range, it must set forth the reasons for its decision in written Findings of Fact and Conclusions of Law (RCW 9.94A.120(3)). These procedures must also be followed if the court departs from the consecutive/concurrent policy in RCW 9.94A.400(1) and (2). Exceptional Sentences may be appealed to the Court of Appeals by the defendant or the prosecutor.

RCW 9.94A.390 provides a list of illustrative factors the court may consider in deciding whether to impose an exceptional sentence. These mitigating and aggravating circumstances for exceptional sentences are provided as examples to the court and are not intended to be exclusive reasons for departures.

#### Mitigating Circumstances for Exceptional Sentences

- To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.
- Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.
- The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.
- The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.
- The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired (voluntary use of drugs or alcohol is excluded).
- The offense was principally accomplished by another person, and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.
- The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.
- The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense, and the offense is a response to that abuse.

### Aggravating Circumstances for Exceptional Sentences

- The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.
- The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.
- The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:
  - (a) The current offense involved multiple victims or multiple incidents per victim;
  - (b) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;
  - (c) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;
  - (d) The defendant used his or her position of trust, confidence or fiduciary responsibility to facilitate the commission of the current offense.
- The current offense was a major violation of the Uniform Controlled Substances Act (VUCSA, Chapter 69.50 RCW), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition. The presence of any of the following may identify an offense as a major VUCSA offense:
  - (a) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;
  - (b) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;
  - (c) The current offense involved the manufacture of controlled substances for use by other parties;
  - (d) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;
  - (e) The current offense involved a high degree of sophistication or planning, or occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or
  - (f) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).
- The current offense included a finding of sexual motivation pursuant to RCW 9.94A.127.

- The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years, manifested by multiple incidents over a prolonged period of time.
- The current offense involved domestic violence, as defined in RCW 10.99.020 and one or more of the following was present:
  - a) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;
  - b) The offense occurred within sight or sound of the victim's or offender's minor children under the age of eighteen years; or
  - c) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.
- The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.
- The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter as expressed in RCW 9.94A.010.
- The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.
- The offense resulted in the pregnancy of a child rape victim.

## RESTITUTION

The court shall order restitution whenever a felony results in injury to a person or damage or property loss. If restitution is not ordered, the court is to indicate the extraordinary reasons on the record (RCW 9.94A.120(18)).

Restitution may also be ordered to pay for an injury, loss or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that he or she pay restitution for any offenses not prosecuted pursuant to a plea agreement.

Restitution is based on three factors:

- Easily ascertainable damages for injury to or loss of property;
- Actual expenses incurred in treatment for injury to persons; and

- Lost wages resulting from injury.

Restitution for the crimes of Rape of a Child in the First, Second, or Third Degree in which the victim becomes pregnant, must include:

- Victims' medical expenses associated with the rape.
- Support for any child born as a result of the rape if child support is ordered.

Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, and other intangible losses, but may include reimbursement for counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.

Restitution is to be determined at the sentencing hearing or within 180 days. As part of the sentence, the court must set the terms and conditions under which the defendant shall make restitution. It is required that the court be specific about the payment schedule for restitution, so that these sentence conditions may be appropriately monitored by the community corrections officer. The court may not reduce the total amount of restitution ordered.

The offender's compliance with the restitution requirement may be supervised for 10 years after the date of sentence or release from confinement. The restitution portion of the sentence may be modified as to amount, terms, and conditions during this period regardless of the community supervision term and the statutory maximum of the crime. The court may extend the restitution requirement for a second 10-year period.

Restitution for victims is the first priority for payment by an offender.

## CASES INVOLVING FRAUD OR DECEPTIVE PRACTICE

If an offender or organization is found guilty of an offense involving fraud or other deceptive practice, the court may require that notice be given to the class of persons or sector of the public affected by the conviction or financially interested in the subject matter of the offense. The notice may be accomplished by mail, by advertising through designated media, or by other appropriate means (RCW 9.94A.142(5), RCW 9.94A.140(4)).

## FINES

On all sentences for felony offenses, the court may impose fines according to the following ranges (RCW 9.94A.386):

Class A felonies	\$0 - \$50,000
Class B felonies	\$0 - \$20,000
Class C felonies	\$0 - \$10,000

Unless the court finds the offender to be indigent, every person convicted of certain VUCSA violations (RCW 69.50.401, 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, 69.50.415) shall be fined \$1,000 in addition to any other fine or penalty imposed. This fine increases to \$2,000 if the violation is a second or subsequent violation of one of the laws specified.

When a fine is imposed for Manufacture, Delivery or Possession with Intent to Manufacture or Deliver Methamphetamine or for Possession of Ephedrine or Pseudo Ephedrine with Intent to Manufacture Methamphetamine, the first \$3,000 may not be suspended and must be applied to the law enforcement entity responsible for cleaning up the methamphetamine lab site.

## OTHER LEGAL FINANCIAL OBLIGATIONS

The Sentencing Reform Act allows the court to order several additional monetary obligations. These include:

- Court costs, including reimbursement for extradition costs (RCW 9.94A.030(10));
- Defense attorney's fees and defense costs (RCW 9.94A.030(10));
- Contributions to a county or interlocal drug fund (RCW 9.94A.030(10));
- Crime victims' compensation assessment (RCW 7.68.035);
- Recoupment to the victim for the cost of counseling as a result of the offender's crime, in cases where the Special Sex Offender Sentencing Alternative is exercised (RCW 9.94A.120(8)(a)(ii)(B));
- Payment for the cost of incarceration, at the rate of \$50 per day;
- Payment of up to \$1,000 in costs incurred by public agencies in an emergency response to the incident that resulted in conviction for Vehicular Assault or Vehicular Homicide by being under the Influence of Intoxicating Liquor or Any Drug.

All such monetary obligations, except probationer assessments, shall be monitored by the Department of Corrections for up to 10 years after the last date of release from confinement or

the date the sentence was entered (RCW 9.94A.120(12)). The court may extend its jurisdiction an additional 10 years.

The court must designate the total amount of a legal financial obligation, distinguishing a separate assessment for restitution, costs, fines, and other assessments. This designation must appear on the Judgment and Sentence form, or on a subsequent order to pay, and include the required schedule for monthly payment. If the court fails to set the monthly payment amount, the department shall set the amount.

In order to assist the court in setting the monthly payment sum, the offender must truthfully report to the Department of Corrections regarding earnings, property, and assets, and supply requested documentation.

The department may recommend to the court modifications in the payment schedule if the offender's financial circumstances change during the period of supervision. In cases where the department sets the monthly assessment amount, the department may modify the monthly assessment without consulting the court.

Civil action for collection of unpaid legal financial obligations may be initiated by the Department of Corrections or any obligee. The law describes the wage assignment process. (See RCW 9.94A.145(3) and 9.94A.2001.)

## CONTACT WITH INDIVIDUALS

The court may prohibit the offender from having contact with specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the community supervision or community placement term. The order prohibiting contact must relate directly to the circumstances of the crime of conviction (RCW 9.94A.120(19)).

## CONSECUTIVE/CONCURRENT SENTENCES

RCW 9.94A.400 identifies several rules regarding consecutive/concurrent sentences. Generally, sentences for multiple offenses set at one sentencing hearing are served concurrently unless there are two or more separate serious violent offenses. In those cases, the sentences are served consecutively. In some cases, the decision to run the sentences consecutively or concurrently is discretionary, but in others, a departure from the policy requires an exceptional sentence. The specific rules are as follows:

Sentencing Persons Convicted of Multiple Offenses Except for convictions of two or more separate serious violent offenses, deadly weapon enhancements, and certain firearm-related sentences, all sentences for multiple offenses are served concurrently (RCW 9.94A.400(1)(a)). Convictions entered or sentenced on the same date as the conviction for which the offender

score is being computed are deemed "other current offenses" within the meaning of RCW 9.94A.400.

Multiple Serious Violent Offenses In the case of two or more serious violent offenses arising from separate and distinct criminal conduct, the sentences for these serious violent offenses are served consecutively to each other and concurrently with any other sentences imposed for current offenses (RCW 9.94A.400(1)(b)). A departure from this rule requires an exceptional sentence (RCW 9.94A.120(17)).

Certain Firearm-related Offenses In the case of an offender convicted of Unlawful Possession of a Firearm First or Second Degree and for Theft of a Firearm or Possession of a Stolen Firearm, or both, the sentences for these crimes are served consecutively to each other (effective for offenses committed after July 23, 1995) (RCW 9.41.040). A departure from this rule requires an exceptional sentence (RCW 9.94A.120(17)).

Deadly Weapon Enhancements In the case of an offender receiving a deadly weapon enhancement for offenses committed after July 23, 1995, the deadly weapon enhancement portion of the standard range is served consecutively to any other sentencing provisions (RCW 9.94A.310). A departure from this rule requires an exceptional sentence (RCW 9.94A.120(17)).

Felony Committed While Offender was Under Sentence for Another Felony Whenever the current offense was committed while the offender was under sentence for a previous felony and the offender was sentenced under another term of imprisonment, the latter term shall not begin until expiration of all prior terms (RCW 9.94A.400(2)). A departure from this rule requires an exceptional sentence (RCW 9.94A.120(17)).

Felonies Committed While Offender was not Under Sentence for Another Felony Subject to the above policies, whenever a person was sentenced under a felony that was committed while the person was not under sentence of a felony, the sentence shall run concurrently with felony sentences previously imposed by any court in this or another state or by a federal court, unless the court pronouncing the subsequent sentence expressly orders that they be served consecutively (RCW 9.94A.400(3)). This rule applies when offenders have been charged in multiple information or have multiple convictions from different jurisdictions.

Probation Revocation Whenever any person granted probation under RCW 9.95.210 or RCW 9.92.060, or both, has a probationary sentence revoked and a prison sentence imposed, this sentence shall run consecutively to any sentence imposed, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently (RCW 9.94A.400(4)). This rule applies when offenders with a pre-SRA case have their probation revoked and are also sentenced on a conviction for a crime committed after June 30, 1984.

Serving Total Confinement with Consecutive Sentences In the case of consecutive sentences, all periods of total confinement shall be served before any periods of partial confinement, community service, community supervision, or any other requirement or condition of a sentence (RCW 9.94A.400(5)). This rule applies to offenders who have not completed their sentence requirements from a previous conviction and are sentenced to total confinement on a new offense.

## STEP 5 - REVIEW OF SENTENCES

A sentence within the standard range cannot be appealed (RCW 9.94A.210). However, a sentence outside the standard range is subject to appeal by the defendant or the prosecutor. To reverse a sentence that is outside the sentence range, the Court of Appeals must find that:

- The reasons supplied by the sentencing judge were not supported by the record, or they do not justify a sentence outside the range; or
- The sentence imposed was clearly excessive or clearly too lenient.

The Department of Corrections may request a review of a sentence committing an offender to the custody or jurisdiction of the department. This review must be limited to errors of law and must be filed with the Court of Appeals no later than 90 days after the department has actual knowledge of the term of the sentence. The department must certify that all reasonable efforts to resolve the dispute at the Superior Court level have been exhausted.

## STEP 6 - PENALTY AND MODIFICATION HEARING

If an offender violates any sentence condition or requirement, the court may modify its judgment and sentence according to the rules in RCW 9.94A.200. The court, upon motion of the state or upon its own motion, must first require the offender to show cause why he or she shall not be punished for the noncompliance. A summons or arrest warrant may be issued by the court for the offender's appearance.

If the court finds that a violation of sentence conditions or requirements has occurred, it may order the offender confined for a period not to exceed 60 days for each violation. The court may (1) convert a partial confinement term to total confinement; (2) convert community service to total or partial confinement; or (3) convert monetary obligations (except restitution and the crime victim penalty assessment) to community service hours by calculating the obligation into hours using the state minimum wage as a calculation basis.

Any time served in confinement awaiting the hearing shall be credited against any confinement order. If the court finds that the violation was not willful, the court may modify its previous



order regarding payment of legal financial obligations and community service obligations. In all cases, escape charges may also be filed if appropriate.

## STEP 7 - DISCHARGE AND VACATION OF CONVICTION RECORD

### DISCHARGE

When an offender completes his or her sentence requirements, the Department of Corrections shall notify the sentencing court in accordance with RCW 9.94A.220. The court then discharges the offender and provides him or her with a certificate of discharge. This certificate restores all civil rights lost upon conviction. It is not, however, based on a finding of rehabilitation.

Following discharge, the offender's prior record may be used to determine the sentence for later offenses and also used in later criminal prosecution as an element of an offense or for impeachment purposes.

### VACATION OF CONVICTION RECORD

Every offender discharged under the above provision may apply to the sentencing court for a vacation of the conviction record as provided in RCW 9.94A.230. The offender's record cannot be cleared if:

- Any criminal charges are pending against the offender in any court in this state, another state, or federal court;
- The offense was a violent offense (as defined in RCW 9.94A.030(38));
- The offense was a crime against persons (as defined in RCW 43.43.830);
- The offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge;
- The offense was a Class B felony, and less than ten years have passed since the date the applicant was discharged; or
- The offense was a Class C felony, and less than five years have passed since the date the applicant was discharged.

If the offender meets these tests, the court may clear the record of conviction by:

- Permitting the offender to withdraw his/her guilty plea and to enter a plea of not guilty;  
or
- Setting aside the guilty verdict, if the offender was convicted after a plea of not guilty;  
and
- Dismissing the information or indictment against the offender.

Once the court vacates a record of conviction, the offender's conviction shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction and the offender shall be released from all penalties and disabilities resulting from the offenses. For all purposes, including responding to questions on employment applications, an offender whose record of conviction has been vacated may state that he or she has never been convicted of that crime. However, a vacated conviction record may be used as an element of a crime in a later criminal prosecution for the limited number of offenses whose classification as a felony requires proof of a prior conviction (e.g., Communication with a Minor for Immoral Purposes).

The sentencing guidelines allow automatic "wash out" of prior convictions that meet the requirements of vacation of conviction. This policy allows offenders who do not formally apply to the court to have eligible offenses excluded from their criminal history in subsequent convictions. (See page I-10 for further discussion of this policy.)